



AP/Tfw

PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ward

Examiner: Christopher S. Kim

Serial No.: 10/768,263

Group Art Unit: 3752

Filed: January 30, 2004

For: Mechanically Sealed Adjustable Gas Nozzle

REPLY BRIEF ON APPEAL

Commissioner of Patents and Trademarks
P. O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Further to the Examiner's Answer of October 27, 2009, ("Answer"), herewith the Applicant respectfully responds.

I. RESPONSE TO GROUNDS OF REJECTION

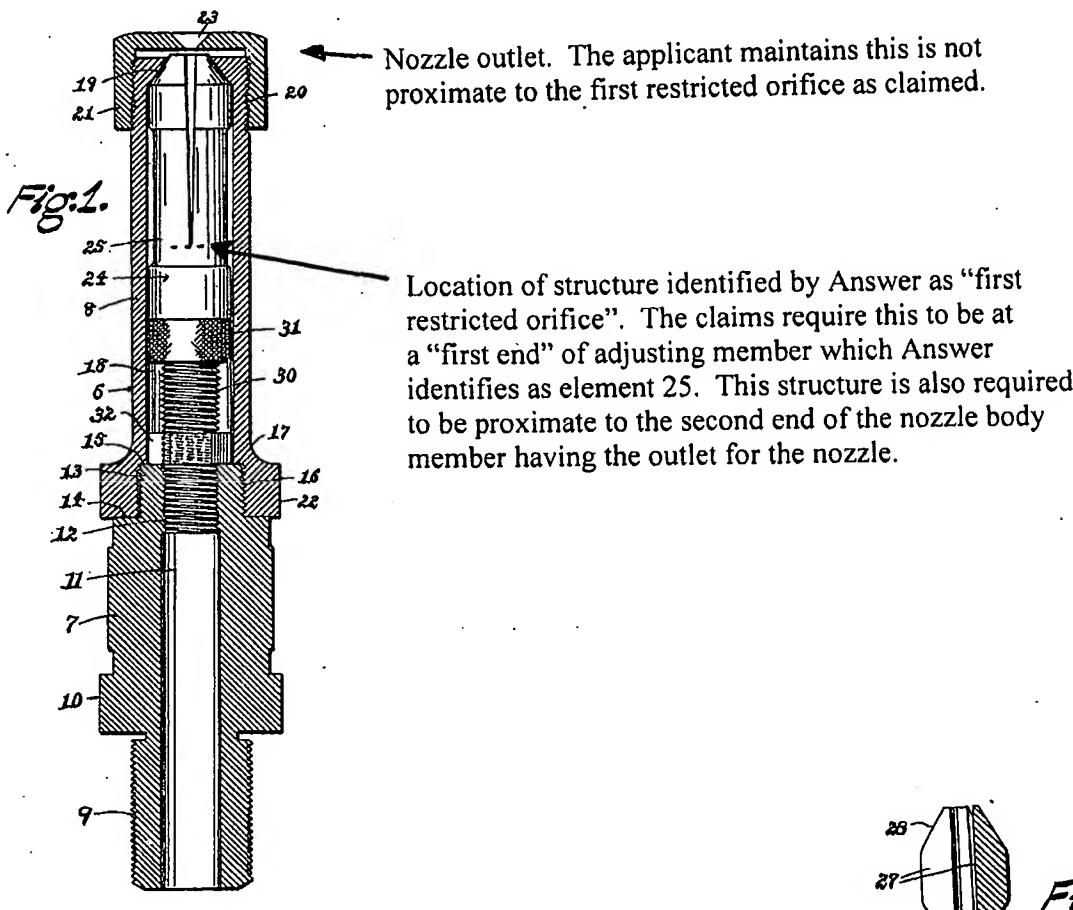
The Examiner has fairly reiterated the rejections initially proposed in the December 31, 2008, Final Office Action. The Applicant continues to maintain the positions as articulated in the Appeal Brief.

II. RESPONSE TO ARGUMENT

For clarity, the Applicant will utilize the same identification system utilized by the Examiner in the Answer.

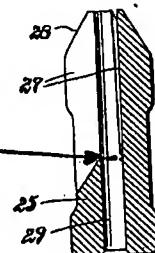
II.A.1.a. The Figures 1 and 5 from Hinchman probably best show the Examiner's position relative to that of the Applicant. A dotted line has been inserted by the Applicant on Figure 1 and Figure 3 to show the structure that has been identified by the Examiner as the "first restricted orifice" which the Examiner interprets as being at a first end of

the adjusting member. The Applicant maintains that this location cannot be interpreted at an end, but is virtually at a midpoint of the structure identified as the adjusting member by the Examiner. Furthermore, the identified structure is not proximate to the second end of the nozzle body member (having the outlet) of the structure cited in the equivalent structure as required by the claim. This claim element is not addressed in the final Office Action or the Answer.



Location of structure identified by Answer as "first restricted orifice". The claims require this to be at a "first end" of adjusting member which Answer identifies as element 25. This structure is also required to be proximate to the second end of the nozzle body member having the outlet for the nozzle.

The Answer's identified "first restricted orifice" which is identified as being at the first end of the adjustment member 25. The applicant disagrees with this characterization.



II.A.1.b. Instead of consistently examining structure **25** as the adjusting element, element **26** is included and analyzed in order to provide structure for a second end. The Applicant disagrees with such a finding.

II.A.1.c. The Applicant finds the Applicant's argument in the Appeal Brief more persuasive than of the Answer.

II.A.1.d. The Examiner states in this section of the Answer: "It may not be the manner in which Hinchman intended to operate." Accordingly, the Answer effectively acknowledges that the proposed modification by the Answer to Hinchman is not taught or suggested and relies strictly upon the teaching of the Applicant in order to formulate the rejection.

II.A.1.e. The Answer proposes that element **26** could be retracted into conduit **7** so that surfaces **19** and **27** would be spaced apart. In such a construction, Hinchman fails to regulate which is the entire purpose of the device. Therefore the proposed interpretation not only cannot anticipate, it also cannot render the Applicant's construction obvious by proposing a proposed position that cannot meet the design objectives of the construction.

II.A.1.f. The Applicant respectfully disagrees with the Answer on this issue.

II.A.1.g. The Examiner and Applicant agree that no new issues are raised by that Paragraph.

II.A.2. The Applicant disagrees that the different cross hatching represents different materials. The Blake reference newly identified is not applicable to an anticipation rejection regarding Hinchman. Different cross hatching in Hinchman is believed to only represent different parts and not different materials. Absolutely no other inference should be

made. The Applicant and the Examiner disagree that the difference that cross hatching could possibly relate to the teaching or suggestion provided by Hinchman.

II.A.3. The Applicant would state that element **23** is the outlet and not an intermediate orifice created in body member **8** as proposed by the argument in the Answer. An intermediate orifice is not an outlet.

II.A.4. The Applicant believes the Appeal Brief's explanation is more persuasive than that provided by the Answer.

II.A.5. The Applicant and the Examiner agree with the issue as it relates to material selection is also discussed with other claims.

II.A.6. The Applicant and the Examiner agree that other claims address this issue.

II.A.7.a. With respect to the Argument **II.A.7.a.**, it is interesting that only element **26** is identified as the adjustment member for this claim. Remember, both elements **25** and **26** were combined to provide the adjustment member for the arguments for **II.A.1.a.** and **II.A.1.b.** Accordingly, the Applicant believes that the Answer takes conflicting positions as to the cited structure in order to formulate the rejections utilizing the Applicant's specification as a roadmap.

II.A.7.b. The Examiner is correct as it relates to his argument that the cooperating surfaces need not be an element of the adjustment member. The Examiner's argument as it relates to **II.A.7.b.** is more persuasive than that of the Applicant's on this point.

II.A.7.c. The Applicant and the Examiner disagree as to the capability of Hinchman to meet the claim limitation.

II.B.1. On this issue, the Answer fails to address the argument articulated by the Appellant in the Appeal Brief and repeats language from the Final Office Action. Specifically, the proposed modification of principal of operation does not form a proper *prima facie* case of obviousness.

II.B.2.a. The Applicant and the Examiner agree that the issues discussed are addressed with other claims.

II.B.2.b. The Applicant would agree that motivation to prevent inadvertently disengaging the cover is found in Ito, Column 4, line 67. However, disengaging the cover and providing a seal are two different and distinct motivations. There is no motivation to provide a seal except the Applicant's disclosure. Therefore, the Applicant believes that the Answer has effectively acknowledged that there is no teaching or suggestion to provide a seal as claimed.

II.C.1. The Examiner has provided a definition of "integral" and then attempted to dissect a portion of the definition to provide an unintended claim interpretation. Taken in context with the specification and prosecution history that "integral" means "integral." A separate O ring does not meet the definition as improperly analyzed by the Answer.

II.C.2.a. The Applicant agrees with the Examiner that the issues for this section are addressed with a reference to arguments made for other claims.

II.C.2.b. The Applicant respectfully disagrees with the Examiner. The Examiner has taken a water seal and stated that it is the functional equivalent of a gas seal. It is the Answer that takes the position that seals of various scopes are equivalent, not the Applicant. The Applicant maintains a water seal does not teach a gas seal.

II.D.a. As identified in the Appeal Brief, ribs 35 retain O rings 37. O rings 37 provide the seal, not ribs 35 as identified by the Answer. O ring 37 is not integral, and the ribs 35 do not provide the integral seal as claimed.

II.D.2.a. The Applicant agrees with the Answer that no new issues are raised in this section relative to arguments made with regard to other claims.

II.D.2.b. The Applicant has argued that there is no motivation to combine references. The Answer does not address the motivation issue.

Conclusion

In total, the Applicant's Appeal Brief is believed to be more convincing arguments than the Answer in reversal of all the articulated rejections respectfully requested.

Respectfully submitted,

Date: November 20, 2009 By:

Stephen J. Stark
Attorney for Applicant
MILLER & MARTIN PLLC
Suite 1000 Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402
(423) 756.6600



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Patents and Trademarks
P. O. Box 1450
Alexandria, Virginia 22313-1450

on this 20th day of November, 2009.

By:

Beverly L. Middleton
Beverly L. Middleton